

# MEMO



## THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

TO: Montgomery County Planning Board  
FROM: Planning Department  
SUBJECT: Status of Council Worksessions on FY 90 AGP  
DATE: June 15, 1989

-----  
During their worksessions on the FY 90 AGP, the Council made the following decisions.

### Policy Area Boundaries

1. The Council separated Aspen Hill from the Kensington/Wheaton/Aspen Hill policy area as the Planning Board had recommended. They provided a 6 month grandfather provision to allow the queue of pending applications to receive preliminary plan approval up to the net remaining capacity in effect prior to the split.
2. Council wants a comprehensive review of the structure of policy areas. They would like to have this on their agenda this summer in order to determine how the Council would like to see this concern addressed.

### Staging Ceilings and Jobs-Housing Allocation

3. Council is very concerned about affordable housing and the need to provide a better balance of jobs and housing in the County. Council staff is drafting language for the AGP resolution which deals with how capacity is allocated to jobs and housing. See Council staff draft language on page Circle 1.
4. Council approved the loss of job ceiling capacity (-1,000 jobs) in Germantown West and the loss of jobs and housing ceiling capacity in Cloverly (-875 housing units, -400 jobs) due to the deletion of transportation projects from the CIP.
5. For two policy areas, Council has revised the jobs/housing allocation in the staging ceilings which the Planning Board had recommended on June 1. In Germantown East, they shifted 2,500 jobs capacity to 1,250 housing units capacity. In Olney, they shifted 50 housing units of capacity to 100 jobs capacity. These

revised ceilings are shown on the next page. They also discussed the possibility of making shifts in other policy areas (Rockville and Bethesda/Chevy Chase) but agreed with the Planning Department staff recommendations not to make these shifts.

6. Council approved the pipeline error corrections in Tables 1 and 2. See Circle page 2 and 3.

#### Transportation Guidelines

7. Council approved Bob Winick's new language for the AGP resolution explaining in greater detail Chart 1 on the correspondence between transit availability and average level of service standards. See Circle page 4.

8. They approved some minor language clarifications in the Local Area Review section of the AGP resolution. See Circle page 5 and 6.

9. Council approved an amendment to the FY 90 AGP resolution submitted by Allan Barlow regarding Friendship Heights. This amendment provides that any trips from approved and/or built projects on properties in the District of Columbia which exceed the total of 2,329 new trips allocated to those properties pursuant to a 1973 statement of the Inter-Jurisdictional Policy Task Force on Friendship Heights shall not be used in local area review. See Circle page 7.

10. Council has asked the Planning Board to initiate an AGP amendment to clarify the intersections which will be analyzed for local area review in Potomac. It has been suggested that the resolution be amended to add the intersection of Tuckerman Lane and Seven Locks Road and the intersection of Democracy Boulevard and Seven Locks Road. Currently, the AGP states, "In the Potomac Policy Area, only the area contributing traffic to the intersection of Montrose Road and Seven Locks Road will be subject to Local Area Review."

#### School Capacity

11. They approved the schools tables and agreed that school capacity is adequate for FY 90 for the purposes of approving preliminary plans of subdivision.

#### Special Ceiling Allocation for Affordable Housing

12. Council approved the idea of counting affordable housing units provided under the AGP affordable housing provision as MPDUs. They agree that developers who provide these units are eligible for the MPDU density bonus.

13. They eliminated the county-wide limit of 1,000 units in the special ceiling allocation for affordable housing section of the AGP resolution.

TABLE 7A

## WITH ERROR ADJUSTMENTS

## AND WITH KENSINGTON/WHEATON/ASPEN HILL SPLIT

Remaining Capacity Under ~~Planning Board Recommended~~ FY 90 APF Transportation Ceilings as of April 6, 1989  
(January 1988 Base)

Policy Area <sup>1</sup>	Jobs			Housing Units		
	Jobs	Pipeline	Remaining	Housing	Pipeline	Remaining
	Ceiling <sup>2</sup>		Capacity	Units <sup>2</sup>		Capacity
	A	B	C=A-B	A	B	C=A-B
Aspen Hill <sup>3</sup>	500	228	272	-1,100	3,018	-4,118
Bethesda CBD <sup>4</sup>	8,211	8,036	175	1,865	1,067	798
Bethesda/Chevy Chase	11,087	965	10,122	4,079	1,894	2,185
Cloverly <sup>5</sup>	-80	13	-93	-1,440	608	-2,048
Damascus	807	455	352	-294	372	-666
Fairland/White Oak	-2,459	7,500	-9,959	-340	2,773	-3,113
Gaithersburg East	8,769	13,626	-4,857	7,367	5,535	1,832
Gaithersburg West	25,137	21,825	3,312	5,879	6,602	-723
Germantown East	2,767	5,267	2,205	3,226	1,976	1,250
Germantown West <sup>5</sup>	7,786	7,484	302	4,134	4,134	0
Kensington/Wheaton <sup>3</sup>	7,000	790	6,210	3,200	818	2,382
North Bethesda	6,277	9,712	-3,435	1,558	1,950	-392
Olney	1,070	970	917	3,549	3,592	-43
Potomac <sup>4</sup>	3,119	351	2,768	3,973	1,913	2,060
Rockville	16,854	15,347	1,507	1,869	402	1,467
Silver Spring CBD	12,466	12,009	457	3,382	1,698	1,684
Silver Spring/Takoma Park	1,004	999	5	725	223	502
Total Policy Areas	112,854	102,462	26,197	44,806	38,072	15,420

<sup>1</sup> Group I Policy Areas are not assigned staging ceilings. In these areas, subdivision applications are subject to Transportation Local Area Review, as well as to relevant zoning and water and sewer constraints.

<sup>2</sup> The ceilings indicate the amount of additional development that can be supported with the transportation capacity available from the first four years of the approved FY 90-95 CIP or FY 89-94 State CTP. Negative numbers indicate the amount by which the estimated level of development exceeds the FY 90 ceilings.

<sup>3</sup> Staging ceilings were not adopted for Aspen Hill and Kensington/Wheaton as separate policy areas in the FY 89 AGP.

<sup>4</sup> Although Ceilings are shown for all Policy Areas, development in Potomac is controlled through Zoning/Water/Sewer constraints and in the Bethesda CBD by the Cordon Capacities established in the CBD Sector Plan.

<sup>5</sup> Policy Areas for which the FY90 staging ceilings have been reduced below FY89 ceilings because road projects included in the approved FY89-94 CIP have been delayed in the approved FY90-95 CIP by 2 or more years.

NOTE: Numbers in column may not sum to policy area totals as negative numbers are treated as zero for summation purposes.

Source: Montgomery County Planning Department, May 1989.

### Queue Management

14. They approved the concept of new queue rules. Council, Planning, and Executive staff still need to refine the language. Council staff draft language can be found on pages Circle 8-10.

15. Council informed the Planning Board that they are to notice applicants in the queue and provide general notice when transportation staging ceiling capacity becomes available.

### Special Staging Ceiling Allocation for Private Health and Higher Education Facilities

16. Council has asked the Planning Board to initiate a amendment to provide special ceiling allocation for medical and higher education facilities. Council staff has revised the proposed language for this amendment. See Circle pages 11-19.

### Flexibility for Large Scale Projects

17. The Washingtonian Center requested an amendment on May 24, 1989 which would allow the Planning Board to waive the provisions of the subdivision ordinance (Section 50-35 (k) (1)) in order to accommodate development projects which: (a) include approval of a development plan and/or concept plan including a staging element, and (b) are subject to developer participation committed by contract with the County, in capital improvement projects for transportation facilities. Council directed staff to analyze this further during the next fiscal year.

### Effect of Growth on Revenues and Expenditures

18. The Council noted receipt of the Planning staff material regarding the likely long term effect of growth on revenues and expenditures being developed as part of the Comprehensive Growth Policy study. They asked staff to add "understanding the effect of growth on public revenue and expenditures" to the section on Issues to be Addressed During the Next Fiscal Year in order to focus on the near term effects.

### Miscellaneous Changes

19. Council asked that a master plan amendment be initiated for Shady Grove which would remove the staging element restriction. They do not want this restriction to prevent the Life Sciences Center from moving forward if the County decides to use the partial cost developer participation provisions of the AGP.

20. As per her discussion with the Planning Board on June 1, 1989, Barbara Sears submitted a letter requesting clarification of the partial cost developer participation provision of the AGP. She wants to confirm that background traffic from these special projects will not be counted in local area review of other projects in the queue until the public and private roads to be built to accommodate the special project may also be included in

the LAR. Council directed staff to work this out and only bring it to their attention if an agreement can not be reached. See Circle pages 20-22.

21. Councilmember Subin asked the Planning Board staff to look at new subdivisions and their effect on Travilah Road in Potomac.

Staff Amendment - J/H Criteria

A. Guidelines for Transportation Facilities

- (1) Policy Area Review
  - (a) Establishment of Staging Ceilings

(to be inserted after 3d full paragraph)

\* \* \*

This approach reflects the General Plan recommendation that jobs and housing in the County be balanced so that the number of jobs will approximately equal the number of employed residents. Attainment of that goal is often expressed by the ratio that describes the relationship between the number of employed residents per household to the number of jobs per household. The basic principles utilized are to provide for build-out at a forecasted rate over time that is approximately the same for both jobs and housing and to avoid subdivision moratoria wherever possible.

In allocations for specific policy areas, some modifications to the countywide ratio are made to reflect the character of an area and its related development policies as set forth in the relevant master plan(s), the size and allocation of jobs and housing in the existing base and pipeline of development. Modifications may also be made to avoid or reduce the duration of any subdivision moratorium. The product of these adjustments is tested against the appropriate level of service in the transportation model to determine the specific ceiling allocation as described above.

TABLE 1  
CHANGES IN THE JOB PIPELINE FROM 4/1/88 TO 4/6/89

Policy Area	A	B C D E				F	G	H	I	J
	Remaining Capacity 4/1/88 (1/87 Base)	Changes Due to New Approvals				Technical Changes	B+C+D+E+F <sup>1</sup> Total Changes in Pipeline	Changes to the Ceiling <sup>4</sup>	A-G+H Remaining Capacity 4/6/89 (1/87 Base)	Errors Not Yet Approved For Adjustment
Bethesda CBD	303	150	0	0	0					
Bethesda/Chevy Chase	10,312	207	0	0	0	-22	128	0	175	0
Cloverly	307	0	0	0	0	0	207	0	10,105	-17
Damascus	665	354	0	0	0	0	0	0	307	0
Fairland/White Oak	(9,496)	58	0	3 <sup>3</sup>	50	-41	313	0	352	0
Gaithersburg East	(4,658)	13	2,060	0	50	693	804	344	(9,956)	3
Gaithersburg West	4,713	1,022	262	0	50	-2,384	-261	0	(4,397)	460
Germantown East	2,989	67	0	0	50	-278	1,056	0	3,657	345
Germantown West	2,015	1,032	0	102 <sup>3</sup>	0	-190	-73	0	3,062	0
Kens./Wheaton/Aspen Hill	6,214	114	0	0	10	-421	713	0	1,302	0
North Bethesda	(431)	24	0	107 <sup>3</sup>	0	-64	60	0	6,154	-262
Olney	17	74	0	0	0	3,070	3,201	672	(2,960)	475
Potomac	2,768	0	0	0	0	-10	64	0	(47)	0
Rockville	1,635	13	696	49 <sup>3</sup>	0	0	0	0	2,768	0
Silver Spring CBD	10,750	10,434	0	0	0	-117	641	0	994	-513
Silver Spring/Takoma Park	356	429	0	0	0	-141	10,293	0	457	0
TOTAL (JOBS)	43,044 <sup>2</sup>	13,991	3,018	261	210	-78	351	0	5	0
Absolute Total (Jobs)		13,991	3,018	261	210	17	17,497	1,016	29,338 <sup>2</sup>	491
						7,509	18,165	1,016		2,075

<sup>1</sup> Changes to the pipeline due to new approvals and technical corrections.  
<sup>2</sup> Totals value negative capacities as zero.

<sup>3</sup> This is a "Loophole" addition to the Pipeline.  
<sup>4</sup> The ceiling was adjusted to allow for additional development under the trip reduction programs or developer participation in the capital improvement projects. This includes trip reduction programs approved prior to April 1, 1988.

TABLE 2  
CHANGES IN THE HOUSING PIPELINE FROM 4/1/88 TO 4/6/89

	A	B	C	D	E	F	G	H	I
	Remaining Capacity 12/22/88 (1/87 Base)	<u>Changes Due to New Approvals</u>			Technical Changes	B+C+D+E+F <sup>1</sup> Total Changes in Pipeline	Changes to the Ceiling <sup>4</sup>	A-F+G Remaining Capacity 4/6/89 (1/87 Base)	Errors Not Yet Approved For Adjustment
Policy Area		Plans Approved by M-NCPPC	Plans Approved by Cities	Sewer Additions					
Bethesda CBD	1,013	262	0	0	-47	215	0	798	0
Bethesda/Chevy Chase	3,497	415	0	572 <sup>3</sup>	0	987	0	2,510	325
Cloverly	(1,168)	17	0	0	-2	15	0	(1,183)	-10
Damascus	(664)	2	0	0	0	2	0	(666)	0
Fairland/White Oak	(3,668)	381	0	0	-94	287	711	(3,244)	-131
Gaithersburg East	2,013	88	155	0	-2	241	0	1,772	-60
Gaithersburg West	1,576	2,055	217	0	14	2,286	0	(710)	13
Germantown East	130	219	0	0	-19	200	208	138	0
Germantown West	543	543	0	0	0	543	0	0	0
Kens./Wheaton/Aspen Hill	1,982	117	0	959 <sup>3</sup>	56	1,132	0	850	24
North Bethesda	(173)	261	0	0	95	356	137	(392)	0
Olney	417	709	0	0	0	709	0	(292)	36
Potomac	2,109	201	0	0	-43	158	0	1,951	-109
Rockville	1,486	0	19	0	0	19	0	1,467	0
Silver Spring CBD	3,348	1,664	0	0	0	1,664	0	1,684	0
Silver Spring/Takoma Park	578	80	0	0	0	80	0	498	-4
TOTAL (UNITS)	18,692 <sup>2</sup>	7,014	391	1,531	-42	8,894	1,056	11,668 <sup>2</sup>	84
Absolute Total (UNITS)		7,014	391	1,531	372	8,894	1,056		712

<sup>1</sup> Changes to the pipeline due to new approvals and technical corrections.

<sup>2</sup> Totals value negative capacities as zero.

<sup>3</sup> This is a "Loophole" addition to the Pipeline.

<sup>4</sup> The ceiling was adjusted to allow for additional development under the trip reduction programs or developer participation in capital improvement projects. This includes trip reduction programs approved prior to April 1, 1988.



PROPOSED BY PLANNING STAFF  
AT REQUEST OF COUNCIL STAFF

June 1, 1989

SUGGESTED ADDITION TO PAGE CIRCLE 5 OF THE  
GUIDELINES FOR TRANSPORTATION FACILITIES

...In that way there is an opportunity for an approximate equivalent transportation level of service to the residents and employees throughout the County.

Chart I provides a refined basis for showing the relationship between transit availability and the average level of service standards on the roads. The Chart is based upon the material presented primarily in Chapter 6 of the Planning Department Staff's Transportation Background Report for the FY 89 AGP of December, 1987. In Chart I, combinations of transit service that provide increased coverage and frequency and with more accessible and closer spaced stations and stops, are ranked as defining a higher level of transit service. On the other hand, combinations of transit service and facilities that provide less coverage, less frequent service, and/or less accessible service with more widely spaced stations and stops are ranked as defining a lower transit level of service. These underlying conceptual and operational measures of coverage, route density, frequency of service and accessibility to transit are used primarily in a qualitative manner to describe and rank order the six different transit LOS categorical definitions given in Chart I. That Chart takes into account not only fixed guideway transit systems such as Metrorail, MARC commuter rail and potential light rail trolleys, but it also can be applied to a bus-based transit system such as busways and high occupancy vehicles priority systems as well as to auto dependent transit systems which are based to a large part on park/ride access as opposed to walk and bus access.

tranfac.bw

# DRAFT

Resolution No. \_\_\_\_\_

Local Area Review must be undertaken for subdivisions which would generate more than 50 peak hour automobile trips in either of the following circumstances:

- o For the policy area, total approved development is within 5 percent of the policy area ceiling; or
- o For the local area, the proposed development is located near a congested area.

In administering the Local Area Review (LAR), the Planning Board must not approve a subdivision if it finds that an unacceptable peak hour level of service will result after taking into account existing roads, programmed roads, available or programmed mass transportation, and improvements to be provided by the applicant. If the subdivision will affect an intersection, or roadway link for which congestion is already unacceptable, then the subdivision may only be approved if it does not make the situation worse.

The mid-point of Level of Service E is presumed to be the condition under which a roadway intersection or link is operating at maximum capacity. Critical Lane Volumes or Link Level of Service higher than the mid-point of LOS E are deemed to reduce the overall efficiency of the road network. For Groups II to V Areas, a peak hour level of service below the midpoint of LOS E is unacceptable for Local Area Review. The Silver Spring CBD, a Group VI Area, has special LAR guidelines in the most current Planning Board administrative guidelines for Local Area Review. (As of the printing of the Annual Growth Policy, the most current guidelines were adopted on July 14, 1988.) In Group I Areas, Level of Service below Level of Service D is unacceptable for Local Area Review.

CLAR  
PLA  
Bd  
ct

The nature of the LAR test is such that a traffic study is necessary if local congestion is likely to occur. The Planning Board and staff will examine the applicant's traffic study to determine whether adjustments are necessary to assure that the traffic study is a reasonable and appropriate reflection of the traffic impact of the proposed subdivision after taking into account all approved development and programmed transportation projects.

For Local Area Review purposes, the programmed transportation projects to be considered are those included in the most recent edition of the County Executive's Approved Road Program (ARP). The Approved Road Program shall include only roads programmed in the current approved Capital Improvements Program and the Maryland Consolidated Transportation Program for which:

- (1) The County Executive has determined that construction will begin within two years of the effective date of the approved road program; and
- (2) In the case of the County CIP, 100 percent of the expenditure for contracts, have been appropriated.

# DRAFT

Resolution No. \_\_\_\_\_

For these purposes, roads required under Section 302 of the Charter to be authorized by law are not to be considered programmed until the time for petition to referendum has expired without a valid petition, or the authorizing law has been approved by referendum.

The Planning Board has adopted guidelines for the administration of Local Area Review. To the extent that they are consistent with these legislative guidelines, the Planning Board guidelines may continue to apply or to be amended as the Planning Board deems it necessary to do so. [See Montgomery County Planning Department's report "1987 - Alternative Transportation Scenarios and Staging Ceilings," for these guidelines.] See the Montgomery County Planning Board's most current administrative guidelines for Local Area Transportation Review. (As of the printing of this Annual Growth Policy, the most current guidelines were adopted July 14, 1988.)

In its administration of Local Area Review, the Planning Board shall give careful consideration to the recommendations of the County Executive concerning the applicant's traffic study and proposed improvements or any other aspect of the LAR.

## B. Guidelines for Public School Facilities

### (1) Geographic Area

For the purposes of public school analysis and local area review of school facilities at time of subdivision, the County has been divided into 21 areas called high school clusters as shown in Map 4. These areas coincide exactly with the cluster boundaries used by the Montgomery County Public School system.

The Council evaluated available capacity in each high school cluster and compared enrollment projected by Montgomery County Public Schools for each fiscal year with projected school capacity four years out.

If insufficient capacity was available, the Council determined whether an adjacent cluster or clusters had sufficient capacity to cover the projected deficit in school capacity. The Council's groupings were only for the administration of the Adequate Public Facilities Ordinance and are not in any way a required action by the Board of Education in exercising its power to designate school service boundaries.

### (2) School Capacity Measure

The Council used 110 percent of Council funded program capacity as the school capacity measure in the administration of the Adequate Public Facilities Ordinance. This capacity measure does not count relocatable classrooms in computing a school's permanent capacity.

Based on the approved FY [89-94] 90-95 CIP, the Council funded regular program capacity is a class size of 25 for grades 1-6, 44 for half day kindergarten where it is currently provided, 22 for all day kinder-

Draft Amendment to the AGP -- Alternative No. 3

FRIENDSHIP HEIGHTS CENTRAL BUSINESS DISTRICT -- SPECIAL  
PROCEDURES FOR LOCAL AREA REVIEW

For analysis of properties located within the Friendship Heights Central Business District, as defined by the 1974 Friendship Heights Sector Plan, any traffic trips from approved and/or built projects on certain properties in the District of Columbia which exceed the total of 2,329 new trips allocated to those same properties in the District of Columbia pursuant and subject to the August 30, 1973, statement of the Inter-Jurisdictional Policy Task Force on Friendship Heights (as set forth in Appendix "E" and referred to on pages 39-41 of the 1974 Friendship Heights Sector Plan), shall not be used in making a determination that local intersections are operating at adequate levels of service.

FY 90 ANNUAL GROWTH POLICY

Staff Draft Amendment on Subdivision Administration

Substitute for the Planning Board Language Beginning on Circle \_\_\_\_  
of Revised AGP Resolution:

[(f) General Application and Review Procedures for Transportation]

(f) Allocation of Staging Ceiling to Preliminary Plans of Subdivision

The Planning Board allocates available staging ceiling capacity in a policy area based on the queue date of a preliminary plan of subdivision.

(i) Assignment of queue date

The queue date of a preliminary plan of subdivision is the date:

- (1) a complete application is filed with the Planning Board;
- (2) an updated traffic study is filed, if required to obtain a new queue date under paragraph (iv)(2); or
- (3) 6 months after the prior queue date if the prior queue date expires under subparagraph (iii)(1)(a) and the application does not include a traffic study.

(ii) Calculation of available staging ceiling capacity

The Planning Board determines whether there is adequate staging ceiling capacity available for a project by subtracting the capacity required by projects with earlier queue dates from the remaining capacity on Table 2 as updated periodically. Based on this calculation, the Planning Board may:

- (1) approve a project for which there is sufficient capacity;
- (2) approve part of a project for which there is sufficient capacity, leaving the remainder of the project in the queue until additional capacity becomes available;
- (3) deny an application for a project for which there is insufficient capacity; or

- (4) defer approval of a project and leave the project in the queue until sufficient capacity becomes available for all or part of the project. If approval is deferred, the Planning Board will not hold a hearing on the application unless the applicant requests one.

If there is sufficient capacity for a project based on the queue date, the Planning Board must not deny an application based on changes in the staging ceiling or pipeline while the queue date is in effect.

(iii) Expiration of queue date

- (1) A queue date for a preliminary plan of subdivision expires:

- (a) 6 months after the queue date if there is sufficient staging ceiling capacity for the entire project on the queue date and the Planning Board has not scheduled the application for action;
- (b) 6 months after sufficient capacity becomes available for the entire project if an updated traffic study is not required under paragraph (iv)(1);
- (c) 6 months after an updated traffic study is filed if required under paragraph (iv)(1); or
- (d) on the applicant's failure to request background data, to submit an updated traffic study, or to submit a complete updated traffic study after notice that a study is incomplete, all within the time limits in subsection (iv).

- (2) The Planning Board may grant a 6-month extension of a queue date if the applicant demonstrates that a queue date expired or will expire because of governmental delay beyond the applicant's control.

(iv) Updated traffic studies

- (1) Required when sufficient capacity becomes available

The queue date of an application for which there is not sufficient staging ceiling capacity when the complete application is filed, and which includes a traffic study, will expire when sufficient capacity becomes available, unless the applicant:

(a) requests background data from the Planning Board to prepare an updated traffic study within 1 month after capacity becomes available; and

(b) submits an updated traffic study within 1 month after receiving the background data. However, if the Planning Board provides the background data between June 1 and September 15, the updated study must be submitted by October 15.

(2) Required to obtain a new queue date after expiration

If the queue date of an application which includes a traffic study expires, an updated traffic study must be filed to obtain a new queue date.

(3) Notice of incomplete updated traffic study

The Planning Board must notify an applicant within 15 days after an updated traffic study is filed if the study is incomplete. An applicant must file a complete traffic study within 30 days of receipt of the notice that a study is incomplete.

(v) Treatment of existing complete applications

This section does not apply to an application which is complete on June 27, 1989. Such an application retains its queue date for 6 months after the complete application was filed, after which the application will be assigned a new queue date and will be processed under this section.

- I. Guidelines for the Administration of the Adequate Public Facilities Ordinance
- A. Guidelines for Transportation Facilities
- (1) Policy Area Review

\* \* \*

(c) Special Ceiling Allocation for Affordable Housing, Health Care, and Educational Facilities

The County's policy of balancing growth in each policy area with the supply of public facilities [, set forth in the Adequate Public Facilities Ordinance and implemented through the Annual Growth Policy, has] may have the effect of preventing the accomplishment of [another important County policy; i.e., the provision of] undermining other important County policies for the provision of: 1) a balanced and adequate housing supply, with emphasis on the availability of affordable housing for low and moderate income families; 2) reasonably accessible health care; and 3) advanced educational opportunities. [To encourage the provision of a housing supply which fosters the availability of affordable housing for low and moderate income families,] This subsection provides a limited exception to policy area review requirements to ensure that these policies are not undermined. The Planning Board may approve [affordable housing] subdivision applications for affordable housing, health care facilities, and institutions of post-secondary education, that promote these policies in any policy area with insufficient net remaining capacity, according to the following guidelines:

(1) Affordable Housing

- (i) An affordable housing development is defined as a housing development which is either owned by the Housing Opportunities Commission or by a partnership in which HOC is the general partner; or a privately-owned housing development in which 20% of the units are occupied by households at or below 50% of the area median income, adjusted by family size, or 40% of the units are occupied by households at or below 60% of the area median income, adjusted for family size. Such a development must be certified by HOC as having met the definition of affordable housing and the owner of such development must enter an agreement with HOC to maintain the occupancy requirements for a period of at least 15 years.
- (ii) For projects owned or controlled by HOC, the Planning Board may approve a special ceiling allocation for affordable housing developments which include up to 125 units in a policy area with insufficient net remaining capacity or, in the alternative, for privately owned affordable housing developments, the Planning Board may approve projects which include up to 250 units in a policy area with insufficient net capacity.
- (iii) Countywide, no more than 1,000 units may be approved under this staging ceiling [amendment] exception in FY 1990.



[(iv) Affordable housing development approved under this increase in the staging ceiling must meet the standards of Local Area Review. (See Section (2), below.)

(v) Development approved under this provision will be added to the pipeline of development.]

## (2) Health Care Facilities

(i) "Health care facility" and "medical service" have the meanings defined in Title 19 of the Health-General Article of the Maryland Code. "Health care facility" does, however, include kidney disease treatment facilities. It includes medical office buildings or medical clinics, as permitted in the zoning ordinance, if a certification of need is made under this paragraph.

(ii) Assuming all other requirements for preliminary plan approval are met, and subject to all limitations of this subsection, the Planning Board must grant a special ceiling allocation for a health care facility if:

(a) a State certificate of need has been issued for a health care facility requiring such approval; and

(b) for facilities not requiring a State certificate of need, a Council appointed hearing examiner certifies, upon the affirmative recommendation of the Director of the Department of Health, that a need exists for the proposed health care facility due to an insufficient number of practitioners or facilities providing similar medical services presently available to serve existing concentrations of population within the policy area and that the applicant reasonably can be expected to serve that specific need.

In making a determination under this subparagraph, the Hearing Examiner should consider, among other relevant factors: (1) any state or local health plan for the area; (2) the type of medical service and number of practitioners providing the service who are located within the policy area or within a reasonable distance in contiguous policy areas; (3) the business plan of the applicant; (4) occupancy projections, including lease arrangements; and (5) any proposed acquisition or relocation of specialized medical equipment.

(iii) Upon receipt of a request for a special ceiling allocation under subparagraph (ii)(b), the Board must forward the request to the Office of Hearing Examiner. The applicant must consent to a deferral of its application before the Planning Board until the Hearing Examiner has made a decision. The decision of the Hearing Examiner is final. The Planning Board must not approve a certified medical office building or medical or dental clinic under this subsection that is expected to produce more than approximately 50 new or additional jobs. The applicant must enter into an agreement with the Planning Board to maintain the development as a health care facility for a period of at least 15 years and to undertake appropriate traffic mitigation measures.

- (iv) Not more than approximately 50 jobs may be approved in a policy for FY 90 under subparagraph (ii)(b).

(3) Institutions of Post-secondary Education

- (i) "Institution of post-secondary education" has the meaning defined in Title 10 of the Education Article of the Maryland Code.

- (ii) A special ceiling allocation may be granted for an institution of post-secondary education if:

- (a) a certificate of approval has been issued by the Maryland Higher Education Commission; and  
(b) upon the affirmative recommendation of the County Executive, the Planning Board finds that the institution will provide increased access to quality educational opportunities for residents of the County or will otherwise provide training or retraining for semi-skilled, skilled or professional workers.

(4) General Requirements

- (i) Not more than 250 jobs, in the aggregate, may be approved Countywide under paragraphs (2) and (3) of this subsection in FY 1990.

- (ii) Any development approved under this subsection must meet all zoning requirements and all other subdivision requirements, including standards for local area transportation review.

- (iii) Development approved under this subsection will be added to the pipeline. However, other applicants with subdivision applications accepted as complete by the Planning Board prior to acceptance of a complete application for the development subject to the special ceiling allocation may be approved in accordance with the ceiling capacity available to it on the date prior to the special ceiling allocation approval.

- (iv) The final draft annual growth policy for FY 91 must contain a list of all pending or approved development under this subsection.

\* \* \* \*

## § 19-101

## HEALTH-GENERAL

Sec.

- 19-708. Applications for certificates to operate.
- 19-710. Basic requirements to operate as a health maintenance organization.
- 19-711. Issuance of certificate of authority; merger, consolidation, etc., with domestic health maintenance organization.
- 19-711.1. Conversion to for-profit health maintenance organization.
- 19-714. Marketing documents.
- 19-727. Applicability of tax laws.

### Subtitle 9. Hospice Care Facilities.

19-901. Definitions.

- (a) In general.
- (b) Home-based hospice care program.
- (c) Hospice facility.
- (d) General hospice care program.
- (e) General license.
- (f) Limited hospice care program.
- (g) Limited license.

19-903. Regulations.

### Subtitle 13. Private Review Agents.

Sec.

19-1301. Definitions.

- (a) In general.
- (b) Utilization review.
- (c) Private review agent.
- (d) Utilization review plan.
- (e) Secretary.
- (f) Commissioner.
- (g) Certificate.

19-1302. Purpose of subtitle.

19-1303. Certificates — Required issuance, transferability.

19-1304. Same — Application; fees.

19-1305. Same — Additional information.

19-1306. Same — Expiration; renewal.

19-1307. Same — Denial; revocation.

19-1308. Waivers.

19-1309. List of private review agents.

19-1310. Reporting requirements.

19-1311. Disclosure or publication of medical records or information.

19-1312. Penalties.

19-1313. Judicial review.

### Subtitle 1. Comprehensive Health Planning.

#### Part I. Health Planning and Development.

## § 19-101. Definitions.

(a) *In general.* — In Part I of this subtitle the following words have the meanings indicated.

(b) *Certificate of need.* — "Certificate of need" means a certification of public need issued by the Commission under this subtitle for a health care project.

(c) *Commission.* — "Commission" means the State Health Resources Planning Commission.

(d) *Federal Act.* — "Federal Act" means the National Health Planning and Resources Development Act of 1974 (Public Law 93-641), as amended.

(e) *Health care facility.* — (1) "Health care facility" means:

(i) A hospital, as defined in § 19-301 of this title;

(ii) A related institution, as defined in § 19-301 of this title;

(iii) An ambulatory surgical facility or center which is any entity or part thereof that operates primarily for the purpose of providing surgical services to patients not requiring hospitalization and seeks reimbursement from third party payors as an ambulatory surgical facility or center;

(iv) An inpatient facility that is organized primarily to help in the rehabilitation of disabled individuals, through an integrated program of medical and other services provided under competent professional supervision;

(v) A home health agency, as defined in § 19-401 of this title;

(vi) A hospice, as defined in § 19-901 of this title; and

(vii) Any other health institution, service, or program for which Part I of this subtitle requires a certificate of need.

(2) "Health care facility" does not include:

(i) A hospital or related institution that is operated, or is listed and certified, by the First Church of Christ Scientist, Boston, Massachusetts;

(ii) For the purpose of providing an exemption from a certificate of need under § 19-115 of this subtitle, a facility to provide domiciliary, personal, or nursing care constructed by a provider of continuing care, as defined by Article 70B of the Code, if:

1. The facility is for the exclusive use of the provider's subscribers;
2. The number of comprehensive care nursing beds in the facility does not exceed 20 percent of the number of independent living units at the continuing care community; and

3. The facility is located on the campus of the continuing care facility;

(iii) A kidney disease treatment facility, as defined by rule or regulation of the United States Department of Health and Human Services;

(iv) The kidney disease treatment stations and services provided by or on behalf of a hospital or related institution; or

(v) 1. The office of one or more private physicians, podiatrists, or dentists, regardless of whether such office is eligible or receives reimbursement from third party payors as an ambulatory surgical facility or center, if that office provides services only within a single medical or surgical subspecialty as determined by the Health Resources Planning Commission in regulation, if the office is used only for the physician's patients or patients of the group, and if the office includes not more than 4 surgical suites.

2. For the purposes of this paragraph subspecialty includes ophthalmology.

(f) *Health service area.* — "Health service area" means an area of this State that the Governor designates as appropriate for planning and developing of health services.

(g) *Local health planning agency.* — "Local health planning agency" means a body that the Commission designates to perform health planning and development functions for a health service area. (1982, ch. 108, § 1; 1985, ch. 786; 1986, ch. 693, § 1; ch. 864; 1987, ch. 8; 1988, ch. 139.)

**Effect of amendment.**

The 1988 amendment, effective July 1, 1988, reenacted the section without change.

**Editor's note.**

Section 3 of ch. 864, as amended by ch. 139,

Acts 1988, provides that "the Joint Committee on Health Care Cost Containment shall study the effects of this act and shall report its findings and recommendations to the General Assembly on or before January 1, 1989."

## § 19-102. Findings; purpose of subtitle; recognition of Federal Act.

(b) *Purpose of subtitle.* — The purpose of this subtitle is to achieve these priorities by:

(6) Enhancing the strengths of current delivery and regulatory systems and correcting their weaknesses;  
(1988, ch. 6, § 1.)

### § 19-111. Designation of local health planning agencies.

(c) *Requirements for applicants.* — Applicants for designation as the local health planning agency shall, at a minimum, be able to:

- (1) Assure broad citizen representation, including a board with a consumer majority;
- (2) Develop a local health plan by assessing local health needs and resources, establishing local standards and criteria for service characteristics, consistent with State specifications, and setting local goals and objectives for systems development;
- (3) Provide input into the development of statewide criteria and standards for certificate of need and health planning; and
- (4) Provide input into evidentiary hearings on the evaluation of certificate of need applications from its area. Where no local health planning agency is designated, the Commission shall seek the advice of the local county government of the affected area.

(d) *Development of local health plans.* — The Commission shall require that in developing local health plans, each local health planning agency:

- (1) Use the population estimates that the Department prepares under § 4-218 of this article;
  - (2) Use the figures and special age group projections that the Department of State Planning prepares annually for the Commission;
  - (3) Meet applicable planning specifications; and
  - (4) Work with other local health planning agencies to ensure consistency among local health plans.
- (1988, ch. 6, § 1.)

**Effect of amendment.** — The 1988 amendment, approved Feb. 18, 1988, and effective from date of passage, added "and" at the end of subsections (c) (3) and (d) (3).

As the remainder of the section was not affected by the amendment, it is not set forth above.

### § 19-115. Certificate of need — Health care facilities.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Health care service" means any clinically-related patient service including a medical service under paragraph (3) of this subsection.

(3) "Medical service" means:

(i) Any of the following categories of health care services:

1. Medicine, surgery, gynecology, addictions;
2. Obstetrics;
3. Pediatrics;
4. Psychiatry;
5. Rehabilitation;
6. Chronic care;
7. Comprehensive care;
8. Extended care;
9. Intermediate care; or

10. Residential treatment; or

(ii) Any subcategory of the rehabilitation, psychiatry, comprehensive care, or intermediate care categories of health care services for which need is projected in the State health plan.

(b) *Application fee.* — The Commission may set an application fee for a certificate of need for facilities not assessed a user fee under § 19-122 of this subtitle.

(c) *Rules and regulations.* — The Commission shall adopt rules and regulations for applying for and issuing certificates of need.

(d) *Determination of circumstances under which application required.* — (1) The Commission may adopt, after October 1, 1983, new thresholds or methods for determining the circumstances or minimum cost requirements under which a certificate of need application must be filed. The Commission shall study alternative approaches and recommend alternatives that will streamline the current process, and provide incentives for management flexibility through the reduction of instances in which applicants must file for a certificate of need.

(2) The Commission shall conduct this study and report to the General Assembly by October 1, 1985.

(e) *Certificate required.* — (1) A person shall have a certificate of need issued by the Commission before the person develops, operates, or participates in any of the following health care projects for which a certificate of need is required under this section.

(2) A certificate of need issued prior to January 13, 1987 may not be rendered wholly or partially invalid solely because certain conditions have been imposed, if an appeal concerning the certificate of need, challenging the power of the Commission to impose certain conditions on a certificate of need, has not been noted by an aggrieved party before January 13, 1987.

(f) *Same — New facility.* — A certificate of need is required before a new health care facility is built, developed, or established.

(g) *Same — Relocation.* — (1) A certificate of need is required before a health care facility is moved to another site.

(2) This subsection does not apply if:

(i) The Commission adopts limits for relocations and the proposed relocation does not exceed those limits; or

(ii) The relocation is the result of a partial or complete replacement of an existing hospital or related institution, as defined in § 19-301 of this subtitle, and the relocation is to another part of the site or immediately adjacent to the site of the existing hospital or related institution.

(h) *Same — Bed capacity.* — (1) A certificate of need is required before the bed capacity of a health care facility is changed.

(2) This subsection does not apply to any increase or decrease in bed capacity if:

(i) During a 2-year period the increase or decrease would not exceed the lesser of 10 percent of the total bed capacity or 10 beds;

(ii) 1. The increase or decrease would change the bed capacity for an existing medical service; and

§ 10-101

ANNOTATED CODE OF MARYLAND

*Subtitle 2. Maryland Charter for Higher Education.*

Sec.

- 10-201. Subtitle is Charter.
- 10-202. Principles on which public higher education based.
- 10-203. Funding; financial aid programs.
- 10-204. Duties of public institutions of higher education generally.

Sec.

- 10-205. Goals.
- 10-206. Duties of Governor and General Assembly.
- 10-207. Duties of Commission.
- 10-208. Duties of governing boards.
- 10-209. University of Maryland System.
- 10-210. State Board for Community Colleges.
- 10-211. Duties of community colleges.
- 10-212. Nonpublic institutions.

Cross reference. — See Editor's note and Bill review letter note at the beginning of this division.

*Subtitle 1. Definitions.*

§ 10-101. Definitions.

(a) *In general.* — In this division the following words have the meanings indicated.

(b) *Commission.* — "Commission" means the Maryland Higher Education Commission.

(c) *Charter.* — "Charter" means the Maryland Charter for Higher Education.

(d) *Governing board.* — "Governing board" means:

- (1) The Board of Regents of the University of Maryland System;
- (2) The Board of Regents of Morgan State University; and
- (3) The Board of Trustees of St. Mary's College of Maryland.

(e) *Governing body.* — "Governing body" means:

- (1) A governing board;
- (2) A board of trustees of a community college; or
- (3) The governing entity of nonpublic institutions of higher education.

(f) *Institution of postsecondary education.* — (1) "Institution of postsecondary education" means a school or other institution that offers an educational program in the State for individuals who are at least 16 years old and who have graduated from or left elementary or secondary school.

(2) "Institution of postsecondary education" does not include:

- (i) Any adult education, evening high school, or high school equivalence program conducted by a public school system of the State; or
- (ii) Any apprenticeship or on-the-job training program subject to approval by the Apprenticeship and Training Council.

(g) *Institution of higher education.* — "Institution of higher education" means an institution of postsecondary education that generally limits enrollment to graduates of secondary schools, and awards degrees at either the associate, baccalaureate, or graduate level.

(h) *Private career school.* — "Private career school" means a privately owned and privately operated institution of postsecondary education other than an institution of higher education that furnishes or offers to furnish

programs, whether or not requiring a payment of tuition or fee, for the purpose of training, retraining, or upgrading individuals for gainful employment as skilled or semiskilled workers or technicians in recognized occupations or in new and emerging occupations.

(i) *Program; educational program.* — "Program" or "educational program" means an organized course of study that leads to the award of a certificate, diploma, or degree.

(j) *Public senior higher education institution.* — "Public senior higher education institution" means:

- (1) The constituent institutions of the University of Maryland System;
- (2) Morgan State University; and
- (3) St. Mary's College of Maryland.

(k) *Secretary.* — "Secretary" means the Secretary of Higher Education. (1988, ch. 246, § 2.)

Editor's note. — Section 34, ch. 246, Acts 1988, provides that the act shall take effect July 1, 1988.

*Subtitle 2. Maryland Charter for Higher Education.*

**§ 10-201. Subtitle is Charter.**

This subtitle is the Maryland Charter for Higher Education which is a statement of policy for higher education in Maryland. (1988, ch. 246, § 2.)

**§ 10-202. Principles on which public higher education based.**

Public higher education in Maryland should be based on the following principles:

- (1) The people of Maryland expect quality in all aspects of public higher education: teaching, research, and public service;
- (2) Public higher education should be accessible to all those who seek and qualify for admission;
- (3) Public higher education should provide a diversity of quality educational opportunities;
- (4) Adequate funding by the State is critical if public higher education is to achieve its goal;
- (5) The people of Maryland are entitled to efficient and effective management of public higher education; and
- (6) The people of Maryland are entitled to capable and creative leadership in public higher education. (1988, ch. 246, § 2.)



copy

LAW OFFICES

**LINOWES AND BLOCHER**

TENTH FLOOR

1010 WAYNE AVENUE

P O BOX 8728

**SILVER SPRING, MARYLAND 20907**

(301) 588-8580

TELECOPIER (301) 495 9044

SUITE 400  
655 FIFTEENTH STREET, N.W.  
WASHINGTON, D.C. 20005  
(202) 672 9080  
TELECOPIER (202) 347 7342

SUITE 600  
6411 IVY LANE  
GREENBELT, MARYLAND 20770  
(301) 982 3362  
TELECOPIER (301) 982 0595

145 MAIN STREET  
P O BOX 31  
ANNAPOLIS, MARYLAND 21404  
ANNAPOLIS (301) 268 0881  
WASHINGTON (202) 261 1668  
BALTIMORE (301) 269 0045  
TELECOPIER (202) 261 2603

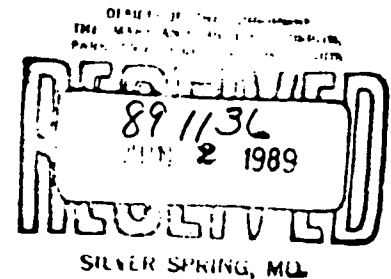
WRITER'S DIRECT DIAL NUMBER

(301) 650-7057

June 2, 1989

CABLE MOLIN

The Honorable Michael Gudis  
President, Montgomery County Council  
100 Maryland Avenue  
6th Floor  
Rockville, Maryland 20850



Re: FY 1990 Annual Growth Policy

Dear Mr. Gudis:

The purpose of this letter is to request that the County Council address an important issue regarding staging ceiling flexibility during its June 5, 1989 worksession on the AGP. In 1988, the Council amended the staging ceiling flexibility provisions of the AGP to provide for partial-cost developer participation for certain specially qualified projects ("special projects") such as an expansion of a pre-existing county employer. The stated purpose of the amendment was to facilitate long-term staged projects that fulfill certain public policy objectives but were prevented from development because of existing APF guidelines. We believe that the clear intent of this amendment was not to adversely impact other subdivision projects constrained by APF guidelines in granting the special treatment.

Our firm represents The Manekin Corporation which has a pending preliminary plan in the Germantown West Policy Area. A request by a county employer under the partial-cost developer participation provision for approval of a multi-million square foot commercial development is pending on a nearby property. As required, this project proposes a development staging plan beyond four years. Manekin wishes to clarify that the background traffic from this special project, if approved, will not be counted in the local area review of Manekin's subdivision application until the public and private roads to be built to accommodate the special project may also be included in the local area review analysis ("LAR"). If this is not the case, subdivision applicants such as Manekin will be severely penalized since they will be required to include as background traffic for LAR purposes massive projects

20

The Honorable Michael Gudis  
June 2, 1989  
Page 2

staged beyond four years and linked to specific roadway improvements, but will not be allowed to include in their analysis the roadway improvements on which such special projects depend. Similarly, such development should not be included in the pipeline for calculating policy area ceilings until the roadways involved are otherwise eligible for inclusion in ceiling calculations.

A specific amendment to the AGP may not be necessary since we believe Park and Planning has the authority to administer the LAR and to calculate ceiling capacity without including special projects in background traffic or the pipeline until appropriate. However, we feel that this matter must be clarified during the Council's worksession so that the Council can confirm the proper interpretation and provide direction to Park and Planning or, if deemed necessary, include specific language in the AGP for FY90. Should the Council determine that the AGP must be amended to address this situation, we recommend that the following language be added to Section I(d)(2)(i)(5) of the AGP Resolution:

(d) Development for any stage approved under this subsection shall not be added to background traffic for local area review purposes until (a) the construction contract for the private additional transportation facilities proposed to serve the eligible project are awarded or (b) the public additional transportation projects proposed to serve the eligible project meet the approved road program eligibility criteria for a local area review road.

(e) Development for any stage approved under this subsection shall not be included as pipeline development until the additional transportation facilities proposed to serve the eligible project are qualified for inclusion in the policy area staging ceilings of the current annual growth policy.

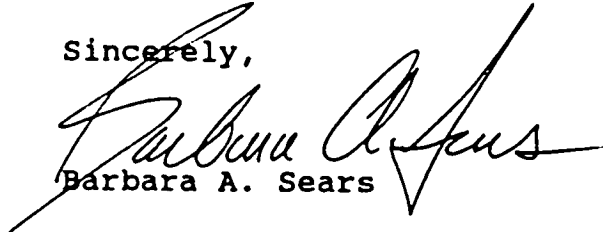
We believe that the above guidance to the Planning Board or, if deemed necessary, amendment to the AGP is critical to achieving fairness and legality in the procedures if partial cost-participation is to be utilized.

LINOWES AND BLOCHER

The Honorable Michael Gudis  
June 2, 1989  
Page 3

Thank you for your consideration of this matter.

Sincerely,



Barbara A. Sears

BAS:slr  
Gudis.2

cc: County Council Members  
Planning Board Members  
Richard Tustian  
Robert Winick  
Ben Bialek  
Bud Liem  
Suzanne Warren